

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MOISES FRANCISCO TORRES,

Plaintiff,

-v-

BETTY GABEL, Ed. Sup. Gowanda C.F.,

Defendant.

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DECISION AND ORDER  
13-CV-0864A

Plaintiff, proceeding *pro se*, who is incarcerated at the Livingston Correctional Facility, filed a Complaint under 42 U.S.C. § 1983 alleging a violation of his procedural rights under the Fourteenth Amendment's Due Process Clause when he was denied his right to an inmate assistant at a Tier III Superintendent's Hearing conducted by Defendant Betty Gabel at the Gowanda Correctional Facility. The Court granted Plaintiff permission to proceed *in forma pauperis* and, upon review of the Complaint pursuant to 28 U.S.C. § § 1915(e)(2)(B), dismissed the claims against former Defendants Brian Fischer and J. Lempke with prejudice and dismissed the claim against Gabel but with leave to amend to allege that his confinement in the Special Housing Unit was an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484-86 (1995). (Docket No. 6, Order.) The Court also dismissed with prejudice Plaintiff's claim that his property was lost or destroyed. (*Id.*, at 9, n.2.) Plaintiff has filed an Amended Complaint against Gabel.<sup>1</sup> (Docket No. 9.)

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<sup>1</sup>See *Davis v. Barrett*, 576 F.3d 129, 134-35 (2d Cir. 2009) ("A detailed factual record is required unless the period of time spent in SHU was exceedingly short—less than 30 days—and there is no indication that the plaintiff endured unusual SHU conditions." "Only when the conditions are uncontested may a district court resolve the issue of atypicality of confinement as a matter of law.") (internal quotations omitted).

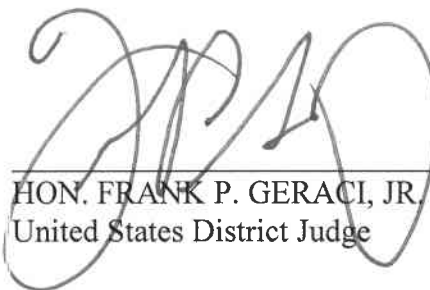
The Clerk of the Court is directed to cause the United States Marshal to serve copies of the Summons, Amended Complaint, this Order and the Order, filed February 13, 2014 (Docket No. 6) on the named Defendant, Betty Gabel, without Plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in Plaintiff's favor.<sup>2</sup>

The Clerk of the Court is also directed to forward a copy of this Order by email to Michael Russo, Assistant Attorney General in Charge, Buffalo Regional Office <Michael.Russo@ag.ny.gov>.

Pursuant to 42 U.S.C. § 1997e(g)(2), the Defendant is directed to answer the Amended Complaint.

SO ORDERED.

Dated: October 2, 2014  
Rochester, New York



HON. FRANK P. GERACI, JR.  
United States District Judge

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<sup>2</sup>Pursuant to a Standing Order of Court, filed September 28, 2012, a defendant will have 60 days to file and serve an answer or other responsive pleading, *see* Fed. R. Civ. P. 12(a)-(b), if the defendant and/or the defendant's agent has returned an Acknowledgment of Receipt of Service by Mail Form within 30 days of receipt of the summons and complaint by mail pursuant to N.Y.C.P.L.R. § 312-a.